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International Covenant on Civil and Political Rights

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Human Rights Committee
122nd session
12 March-6 April 2018
Item 2 of the provisional agenda
Adoption of the agenda

Annotated provisional agenda

Provisional agenda

1. Opening of the session.
2. Adoption of the agenda.
3. Organizational and other matters, including the adoption of the report of the working group on individual communications.
4. Meeting with representatives of United Nations bodies, specialized agencies, national human rights institutions and non-governmental organizations.
5. Consideration of reports submitted by States parties under article 40 of the Covenant.
6. Follow-up to concluding observations on State party reports.
7. Follow-up to Views under the Optional Protocol to the Covenant.
8. Consideration of communications under the first Optional Protocol to the Covenant.
9. Adoption of the annual report to the General Assembly.

Annotations

1. Opening of the session

The United Nations High Commissioner for Human Rights or the representative of the High Commissioner will open the 122nd session of the Committee.

2. Adoption of the agenda

Under rule 8 of the Committee's rules of procedure, the first item on the provisional agenda for any session shall be the adoption of the agenda, except for the election of officers when required under rule 17. Under this item, the Committee will adopt the agenda for the session.

In accordance with rule 6 of the rules of procedure, the present provisional agenda has been prepared by the Secretary-General, in consultation with the Chair of the Committee. In accordance with rule 9, the Committee may revise the agenda during a session and may, as appropriate, defer or delete items.

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3. Organizational and other matters, including the adoption of the report of the working group on individual communications

The 122nd session of the Committee will be held at the United Nations Office at Geneva from 12 March to 6 April 2018. The first meeting will be convened at Palais Wilson, in the ground floor conference room, on Monday, 12 March, at 10 a.m.

Pursuant to rule 33 of the Committee's rules of procedure, the meetings of the Committee will be held in public, unless the Committee decides otherwise or it is apparent from the relevant provisions of the International Covenant on Civil and Political Rights or its Optional Protocols that the meetings should be held in private.

Under the present item, the Committee will consider miscellaneous issues relevant to the Committee's business.

4. Meeting with representatives of United Nations bodies, specialized agencies, national human rights institutions and non-governmental organizations

At each session, the Committee hears representatives of United Nations bodies, specialized agencies, national human rights institutions and non-governmental organizations based in Geneva. Accordingly, the following meetings have been scheduled: on 12 March, with United Nations organizations and specialized agencies, from 10.45 to 11.15 a.m., and with national human rights institutions and non-governmental organizations, from 11.15 a.m. to 1 p.m., on El Salvador, Guatemala, Lebanon and Norway; and on 19 March, with United Nations organizations and specialized agencies, from noon to 12.15 p.m., and with national human rights institutions and non-governmental organizations, from 12.15 to 1 p.m. on Hungary and Liberia.

5. Consideration of reports submitted by States parties under article 40 of the Covenant

The reports to be considered during the 122nd session are those of El Salvador, Guatemala, Hungary, Lebanon, Liberia and Norway. A tentative schedule for the consideration of reports during the 122nd session, prepared in consultation with the Committee, is given below.

Schedule for consideration of reports under article 40 of the Covenant

State	*Report*	*Date*
El Salvador	Seventh periodic report (CCPR/C/SLV/7)	Tuesday, 13 March, afternoon Wednesday, 14 March, morning
Guatemala	Fourth periodic report (CCPR/C/GTM/4)	Monday, 12 March, afternoon Tuesday, 13 March, morning
Hungary	Sixth periodic report (CCPR/C/HUN/6)	Monday, 19 March, afternoon Tuesday, 20 March, morning
Lebanon	Third periodic report (CCPR/C/LBN/3)	Thursday, 15 March, afternoon Friday, 16 March, morning
Liberia	Initial report (CCPR/C/LBR/1)	Tuesday, 20 March, afternoon Wednesday, 21 March, morning
Norway	Seventh periodic report (CCPR/C/NOR/7)	Wednesday, 14 March, afternoon Thursday, 15 March, morning

In accordance with rule 68 of the Committee's rules of procedure, representatives of States parties may be present at the meetings of the Committee when their reports are examined. Accordingly, the Secretary-General has informed the States parties concerned of the dates on which their respective reports are scheduled for consideration by the Committee at its 122nd session.

Country report task forces will examine and adopt lists of issues on the reports of Belize, Guinea and the Sudan and lists of issues prior to reporting for Botswana, Tunisia and Uruguay.

6. Follow-up to concluding observations on State party reports

The Special Rapporteur for follow-up on concluding observations will provide a progress report on his activities.

7. Follow-up to Views under the Optional Protocol to the Covenant

The Special Rapporteur for follow-up on Views will provide a progress report on her activities.

8. Consideration of communications under the first Optional Protocol to the Covenant

Mindful of the provisions under rule 95 of the Committee's rules of procedure, the working group on individual communications will meet prior to the 122nd session, from 5 to 9 March 2018.

In accordance with the provisions of chapter XVII of its rules of procedure, the Committee will consider communications that have been or appear to have been submitted to it under the Optional Protocol.

A total of 690 communications were pending before the Committee as at 29 December 2017.

In accordance with article 5 (3) of the Optional Protocol and rule 88 of the Committee's rules of procedure, the present agenda item will be considered in closed meetings.

9. Adoption of the annual report to the General Assembly

United Nations CCPR/C/122/2

International Covenant on Civil and Political Rights

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8 May 2018

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Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee*

I. Introduction

1. The Human Rights Committee, in accordance with article 40 (4) of the International Covenant on Civil and Political Rights, may prepare follow-up reports based on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their reporting obligations. The present report is prepared pursuant to that article.

2. The report sets out the information received by the Special Rapporteur for follow-up to concluding observations, and the Committee's evaluations and the decisions that it adopted during its 122nd session. The status of the follow-up to concluding observations adopted by the Committee since its 105th session, held in July 2012, is outlined in a table available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fUCS%2f122%2f27134&Lang=en.

Assessment of replies[1]

A **Reply/action largely satisfactory**: The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.

B **Reply/action partially satisfactory**: The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.

C **Reply/action not satisfactory**: A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.

D **No cooperation with the Committee**: No follow-up report has been received after the reminder(s).

E **Information or measures taken are contrary to or reflect rejection of the recommendation**

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

[1] The full assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.

II. Assessment of follow-up information

States parties evaluated with a [D] grade for failure to cooperate with the Committee within the follow-up to concluding observations procedure[2]

State party	*Concluding observations*	*Due date of follow-up report*	*Reminders and related action*
1. Venezuela (Bolivarian Republic of)	CCPR/C/VEN/CO/4 (21 July 2015)	21 July 2016	Reminder 6 December 2016[3] Meeting with the Special Rapporteur on 31 October 2017 Reminder 10 November 2017[4]

113th session (16 March–2 April 2015)

Monaco

Concluding observations:	CCPR/C/MCO/CO/3, 31 March 2015
Follow-up paragraphs:	10
Follow-up reply:	CCPR/C/MCO/CO/3/Add.1, 20 September 2016
Committee's evaluation:	Additional information required on paragraph 10**[C]**

Paragraph 10: Freedom of expression

The Committee recommends that the State party review articles 58 to 60 of its Criminal Code, on publicly offending the royal family, to bring them into line with article 19 of the Covenant. Pursuant to its general comment No. 34 (2011) on freedom of opinion and freedom of expression, the Committee reiterates that the imprisonment of persons by reason of the exercise of their freedom of expression constitutes a violation of article 19, which attaches special importance to free speech. The Committee points out that all public figures, including those who hold office at the highest level, are legitimately exposed to criticism and political dissent, and the laws should not establish harsher penalties solely on the basis of the status of the person being referred to.

Summary of State party's reply

Articles 58 to 60 of the Criminal Code are not intended to limit the scope of freedom of expression. From a comparative law perspective, these provisions do not differ significantly from similar legislation of European monarchies.

From 2008 to 2014, nine prison sentences were pronounced on the basis of these provisions. None of the prosecutions was brought in relation to political debate or involved journalists or the media. In seven of the convictions, the accused also faced a range of other charges,

[2] The follow-up procedure has been discontinued for these States parties. The information on the implementation of all the recommendations in the concluding observations adopted in respect of these States, including those recommendations selected for the follow-up procedure, should be provided in the context of their next periodic report.

[3] See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/INT_CCPR_FUL_VEN_25968_S.pdf.

[4] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fFUL%2fVEN%2f29496&Lang=en.

and the last conviction, in 2014, related to vicious threats and insults unrelated to any political debate pronounced in the Palais de Justice itself.

There are no plans to amend these provisions. The Director of Judicial Services, however, instructed the Public Prosecutor's Office that they should be applied in accordance with article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and with article 19 of the Covenant, and that the provisions were intended to punish insults against the monarch and his family and not to prevent free discussion on matters of public interest.

Committee's evaluation

[C]: The Committee regrets that the State party does not intend to revise articles 58 to 60 to bring them into line with article 19 of the Covenant. It requires updated information on the number of prosecutions for offending the Prince and his family, and of ensuing convictions, as well as the sanctions imposed, since 2016. The Committee reiterates its recommendation.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested will be included in the list of issues prior to submission of the fourth periodic report of Monaco.

Next periodic report: 2 April 2021

114th session (29 June–24 July 2015)

Spain

Concluding observations:	CCPR/C/ESP/CO/6, 20 July 2015
Follow-up paragraphs:	14, 21 and 23
Follow-up reply:	CCPR/C/ESP/CO/6/Add.1, 21 July 2016[5]
Committee's evaluation:	Additional information required on paragraphs 14**[B]**|**[C]**|**[B]**, 21**[E]**|**[C]** and 23**[B]**
Non-governmental organizations:	Asociación Española para el Derecho Internacional de los Derechos Humanos, 22 May 2017[6]
	Amnesty International, 15 June 2017[7]

Paragraph 14: Ill-treatment and excessive use of force by the police

The State party should:

(a) **Redouble its efforts to prevent and eliminate torture and ill-treatment by such means as providing more human rights training for law enforcement officials in the light of the relevant international standards;**

(b) **Establish independent complaint bodies to address claims of ill-treatment by the police;**

(c) **Ensure that all complaints of torture and ill-treatment are investigated promptly, thoroughly and independently and that the perpetrators of such acts are brought to justice;**

(d) **Ensure that victims receive appropriate reparation, including health and rehabilitation services;**

[5] Annexes available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_FCO_ESP_25250_S.pdf and http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_FCO_ESP_25251_S.pdf.

[6] See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_NGS_ESP_27522_S.pdf.

[7] See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ESP/INT_CCPR_NGS_ESP_27764_S.pdf.

(e) **Ensure that forensic examinations of presumed cases of torture and ill-treatment committed by State officials are impartial, comprehensive and conducted in accordance with the Istanbul Protocol;**

(f) **Prohibit the granting of pardons under its legal system to persons found guilty of the crime of torture;**

(g) **Ensure the recording of interrogations of all persons deprived of liberty in police premises and other places of detention.**

Summary of State party's reply

Public authorities have a zero tolerance policy for torture and ill-treatment. According to the 2015 report of the Office of the Ombudsman, the number of complaints of ill-treatment by law enforcement officials is declining. Instructions Nos. 11/2015 (Technical Specifications for the Design and Construction of Detention Facilities) and 12/2015 (Rules for the Treatment of Detainees Taken into Custody by State Security Forces) were adopted on 1 October 2015 to strengthen the integrity of persons in custody in detention centres and to provide clear standards of conduct to custody officers.

(a) The State party elaborates on Instruction No. 12/2015, which was adopted in line with the Committee's recommendations, taking into account the suggestions by the Ombudsman's Office in its capacity as national preventive mechanism. The rules provide for, inter alia, recording any incident occurring during custody in the personal detention file, displaying professional identification numbers on custody officers' uniforms, and equipping detention centres with video surveillance systems. These new rules also contain provisions concerning the training of officers and evaluation of the new measures.

Custody officers must be appropriately trained on the use of force and other techniques, including body searches. The directorates-general of the Police and the Civil Guard must include specialization and refresher programmes for custody officers in their training plans. The State party highlights improvements in the area of training, including: (a) new training courses covering the Code of Conduct for Law Enforcement Officials, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Ethics of the National Police, and the use of force by law enforcement officials; (b) a refresher course on the law relating to aliens, including on internment centres for foreigners; (c) specific training on fundamental rights for police officers; (d) online training offered periodically on the use of force and firearms; and (e) human rights training for officers of the Civil Guard.

(b) Complaints of police ill-treatment are dealt with by the judiciary. The State party reiterates (see CCPR/C/ESP/Q/6/Add.1, para. 17) that the Security Personnel and Services Inspectorate of the State Secretariat for Security is responsible for inspecting, monitoring and evaluating the directorates-general of the Police and the Civil Guard and the conduct of their officers. It falls outside the chain of police command and is directly accountable to the State Secretariat for Security, which ensures its independence from police units. The Inspectorate is an independent body that responds to allegations and complaints of ill-treatment.

The Ombudsman's Office plays an important prevention role through ex officio visits to places of deprivation of liberty, including National Police Corps stations and Civil Guard barracks, and by launching investigations whenever it is notified of acts that could constitute torture or ill-treatment.

(c) The Inspectorate coordinates, monitors and follows up on complaints concerning State security forces. Depending on the seriousness of the act, it transmits information to either the Public Prosecution Service or the disciplinary service of the relevant security force. In some cases, the Inspectorate conducts a prior interlocutory investigation, in all cases with the authorization of the Secretary of State (to whom it reports on the outcome of the investigation). The Public Prosecution Service and investigating judges conduct the necessary proceedings on complaints reaching the courts.

(d) The State party elaborates on Act No. 4/2015 of 27 April 2015 on Rules Relating to Victims of Crime, which seeks to defend victims' material and moral interests.

to offer information and guidance on their rights and the services available to them, to refer them to competent authorities and to provide for appropriate procedural representation.

The rules are based on a broad definition of a victim, which includes both direct victims suffering physical damage or injury, and indirect victims in such cases as death or disappearance.

The rules give special attention to the most vulnerable victims, including victims of torture, through tailored protection measures, and establish victim assistance offices to advise victims about their rights, in particular the possibility of accessing a public compensation scheme, and also about specialized assistance and support services, access to justice free of charge, and the risk of victimization, intimidation or reprisals.

(e) The State party elaborates on regulations adopted by the Ministry of Justice (through the Order of 16 September 1997) regarding the protocol for forensic medical examination of detained persons, and the new ORFILA software used in the institutes of forensic medicine to supplement the Order's provisions. ORFILA incorporates the recommendations set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) by virtue of guidelines for the medical assessment of torture and ill-treatment.

Medical forensic procedures are conducted by qualified public officials employed by the Ministry of Justice or by an autonomous community exercising its authority in this area, thus the reporting official's identity, qualifications, objectivity, competence and authority have been subject to prior checks.

(g) Instruction No. 12/2015 requires that detention facilities run by the State security forces be equipped with video surveillance systems. Instruction No. 11/2015, particularly in its section 6, supplements these provisions. Two thirds of police stations have been equipped and efforts are under way to equip all of them.

Information from non-governmental organizations

Amnesty International and Asociación Española para el Derecho Internacional de los Derechos Humanos

(a) Instruction No. 12/2015 does not apply to the police of the autonomous communities (*comunidades autónomas*) and the local police (*policía municipal*), which also have detention powers, nor does it cover officials of prisons, juvenile centres or psychiatric establishments. It does not explicitly refer to the prohibition of torture, nor to the obligation to inform persons deprived of their liberty about the fundamental legal safeguards, including the right to be examined by a doctor of their choice.

No information was provided by the State regarding training on torture prevention for police forces other than the National Police and the Civil Guard.

(b) The Security Personnel and Services Inspectorate is neither an independent nor an autonomous body. Amnesty International unsuccessfully urged the legislature during the adoption of Act No. 4/2015 to establish an independent mechanism for supervising police activity.

The Ombudsman has no jurisdiction to initiate investigations to clarify facts and identify perpetrators of torture or ill-treatment.

(c) Allegations of torture and ill-treatment are neither thoroughly nor effectively investigated. A European Court of Human Rights judgment from 31 May 2016 indicated that neither the National Court (*Audiencia Nacional*) nor the investigating judge carried out investigations. Amnesty International states that it continues to receive reports of excessive use of force, some which clearly demonstrate a lack of thorough investigation, and refers to four particular cases from 2016, 2014 and 2012.

The Asociación Española para el Derecho Internacional de los Derechos Humanos claims that the lack of independence and the confidentiality of the Inspectorate's actions prevent access to the results of investigations, and judicial inquiries are systematically hindered by the executive through the Public Prosecution Service. It refers to long judicial procedures, closing of cases without proper investigation, and occasional collusion between the

Government, the Public Prosecution Service and courts to ensure that complaints from victims accused of belonging to, or collaborating with, an armed gang are not pursued.

(d) Act No. 4/2015 is not in line with international law. Reference to the right to reparation and reference to sufficient guarantees to ensure non-repetition, compensation, satisfaction and rehabilitation are lacking. The rules do not guarantee the right to compensation (which, if obtained, is calculated at the rates established for traffic accidents) or rehabilitation (there is a total absence of specialized services). Victims of torture or ill-treatment have never received reparation, even when torture has been established by an international body, and the Act has never been applied in respect of any victim.

The State party hinders legislative initiatives promoted by some autonomous communities and aimed at recognizing and providing reparation to victims of torture.

(e) Forensic examinations are neither impartial nor thorough. In spite of the protocol established pursuant to the Order of 16 September 1997, incomplete forensic medical examination forms facilitate impunity. There is no evidence as to the effectiveness of the new ORFILA software. Victims of torture and ill-treatment are denied the right to be examined by doctors of their choice.

(f) The Government continues to have discretion to grant pardons to persons convicted for torture when it deems it appropriate, with a minimum of formal justification, and has done so in the rare cases of police officers convicted of torture or ill-treatment.

(g) The national preventive mechanism found shortcomings in the comprehensive video surveillance coverage of areas where detainees are in transit in most of the security forces facilities visited during 2016, and also observed that some facilities lacked a protocol regarding access to recorded images that were accessible to custody officers. Video surveillance is not operative in all detention centres of the National Police and the Civil Guard and Instructions Nos. 11/2015 and 12/2015 do not apply to all places of deprivation of liberty (see letter (a) above).

Committee's evaluation

[B] (a) and (g): The Committee takes note of the information that the number of complaints of ill-treatment by law enforcement officials is declining, but requires relevant statistics. It also notes the adoption of Instructions Nos. 11/2015 and 12/2015, but observes that neither instruction refers specifically to the prohibition or prevention of torture. The Committee requires additional information on the scope of application (*ratione personae*) of Instruction No. 12/2015, including clarification as to whether (a) it applies to police forces of autonomous communities (*comunidades autónomas*) and to local (municipal) police, and to all places of deprivation of liberty such as prisons, juvenile centres and psychiatric establishments; and (b) its provisions concerning training extend to non-State security forces. The Committee appreciates the information provided on human rights training, but requires additional information on the periodicity of training, the number of beneficiaries, and the availability of training to police forces other than the National Police and the Civil Guard.

The Committee welcomes the equipping of two thirds of police stations with video surveillance, but requires additional information on the progress made in equipping all police premises and other places of detention, including those under the supervision of police forces of autonomous communities and local police, with video surveillance also covering transit areas; on the use of video recordings of interrogations, in practice; and on rules regarding access to video records.

[C] (b) and (f): While noting the information regarding the Security Personnel and Services Inspectorate of the State Secretariat for Security, the Committee regrets that no measures appear to have been taken since the adoption of the concluding observations to establish independent complaint bodies to address claims of ill-treatment by police. The Committee reiterates its recommendation.

The Committee regrets that the State party provided no information on measures taken to prohibit the granting of pardons to persons found guilty of torture. The Committee reiterates its recommendation.

[B] (c), (d) and (e): The Committee notes the information provided on the roles of the Security Personnel and Services Inspectorate, the Public Prosecution Service and investigating judges, regarding investigations of complaints of torture or ill-treatment. However, it requires further and specific information on the exact function of the Inspectorate and on prompt, thorough and independent investigations into all complaints of torture or ill-treatment and punishment of perpetrators (please provide statistics on the number of investigations, prosecutions and convictions, on specific punishments imposed and on reparations provided to victims).

The Committee appreciates the information regarding Act No. 4/2015 on Rules Relating to Victims of Crime, but requires clarification on the Act's compliance with the requirements of article 2 of the Covenant, including the guarantee of non-repetition, compensation and rehabilitation of victims. It also requires information on the adequacy of compensation for victims and the number of victims of torture or ill-treatment who benefited from the victim assistance offices' services and received reparation pursuant to Act No. 4/2015.

The Committee notes the integration of the ORFILA software into the work of institutes of forensic medicine, but requires additional information on specific measures taken to ensure the independence and impartiality of forensic examinations in practice and on the impact of ORFILA in that regard.

Paragraph 21: Past human rights violations

The Committee reiterates its recommendation that the Amnesty Act should be repealed or amended to bring it fully into line with the provisions of the Covenant. The State party should actively encourage investigations into all past human rights violations. The State party should also ensure that, as a result of these investigations, the perpetrators are identified, prosecuted and punished in a manner commensurate with the gravity of the crimes committed and that redress is provided to the victims. The State party should review its legislation on the search for, exhumation and identification of disappeared persons and in this respect urges it to implement the recommendations of the Committee on Enforced Disappearances contained in its recent concluding observations (CED/C/ESP/CO/1, para. 32). The State party should also establish a legal framework at national level for its archives and allow the opening of archives on the basis of clear, public criteria, in accordance with the rights enshrined in the Covenant.

Summary of State party's reply

The State party reiterates (see CCPR/C/ESP/6, para. 191 ff., and CCPR/C/ESP/Q/6/Add.1, para. 24) that Act No. 46/1977, on amnesty, is a key instrument in promoting reconciliation among the Spanish people. Repealing the Amnesty Act would not serve the objective of the Committee's recommendation, given that a law repealing the Act would be a more restrictive law in the area of criminal responsibility. Owing to the principles of the legality and non-retroactivity of criminal law, such a law could not be applied retroactively to events falling within the scope of application of the previous Amnesty Act.

Judges and magistrates, when determining that there could be no recourse to criminal proceedings to investigate events that had taken place in the 1930s and 1940s, took into account the inability to identify perpetrators, the principles of legality and non-retroactivity of criminal law, the expiration of the statute of limitations in respect of those offences, and the 1977 Amnesty Act.

Regarding the search for, exhumation of and identification of disappeared persons, the State party reiterates (see CCPR/C/ESP/6, para. 216) information on the Historical Memory Act (No. 52/2007) and refers to article 11 of that Act on collaboration between public authorities and individuals to locate and identify victims and on the General State Administration's duty to subsidize such costs.

Regarding the establishment of a national legal framework for archives and their consultation, the State party reiterates (see CCPR/C/ESP/6, para. 221) information on the Historical Memory Documentary Centre in the city of Salamanca. The Valle de los Caídos archives have been digitized. The Ministry of Justice makes extensive efforts to inform the

public about the Historical Memory Act, and certificates on declarations of redress and personal recognition continue to be issued.

Information from non-governmental organizations

Amnesty International and Asociación Española para el Derecho Internacional de los Derechos Humanos

Authorities have used the Amnesty Act on numerous occasions to block investigation of international crimes committed during the Civil War and the Franco regime. Amnesty International elaborates on the refusal to cooperate with requests for extradition and judicial assistance, and refers particularly to the 2016 internal order (*orden interna*) adopted by the State Prosecutor's Office (*Fiscalía General del Estado*) instructing the territorial prosecutors to oppose requests by the Argentine justice system regarding the investigation of 19 persons.

Using the Amnesty Act as a pretext for not investigating international crimes is contrary to the right to an effective remedy as enshrined in article 2 of the Covenant. The law in itself provides for amnesty for acts of political intent only (*actos de intencionalidad política*), which does not include war crimes and crimes against humanity. Amnesty International reports that in 2006, the National Court (*Audiencia Nacional*) denied its jurisdiction over a complaint regarding 114,266 victims of human rights violations from 1936 to 1951, leaving the jurisdiction to territorial courts (*juzgados territoriales*). Only 47 cases have been opened. Amnesty International had access to 38 of them, all of them closed mostly on the basis of the Amnesty Act. This trend of closing cases has been consolidated since the Supreme Court's decision of 27 February 2012, which indicated that the Amnesty Act was one of the main obstacles in undertaking investigations.

Amnesty International rejects the State party's argument regarding the principle of legality, since international crimes and criminal responsibility for such crimes are recognized as principles of customary law. It also recalls the principle of non-applicability of statutory limitations, and rejects the argument that it is impossible to identify the alleged perpetrators.

Judges consider that the Amnesty Act is the best way to shed light on the events, and that looking for the truth is a State, not a judicial, mission. However, the Amnesty Act does not enshrine either the right to truth or the right to thorough investigation of international crimes such as enforced disappearances.

On 11 May 2017, the Congress of Deputies (*Congreso de los Diputados*) approved a non-legal proposal (*proposición no de ley*) calling upon the executive to provide a budget for the public policies of recovery of historical memory established in Act No. 52/2007, to assume responsibility for locating, exhuming and identifying victims of enforced disappearances, and to establish a truth commission. The Government declared that it would not comply with it.

Regarding the search for, exhumation of and identification of disappeared persons, Act No. 52/2007 is aimed at limiting the State's obligations to merely facilitating the efforts of the descendants in their search, by granting subsidies. In 2013, the General State Budget eliminated those subsidies, which since 2006 had been part of the budget of the Ministry of the Presidency (*Ministerio de la Presidencia*).

There is no national legal framework regarding archives. Civil society is calling for the adoption of a law regarding access to public information and to all kinds of archives, including ecclesiastic and military archives that are mostly inaccessible due to the law on State defence.

Committee's evaluation

[E]: The Committee regrets that the State party does not intend to repeal the 1977 Amnesty Act and that no measures have been taken to implement its recommendations regarding: (a) the investigation, prosecution and punishment of perpetrators and redress for victims of past human rights violations, in particular for victims of international crimes; and (b) the review of the legislation on the search for, exhumation and identification of disappeared

persons and the provision of adequate resources for that purpose (see CED/C/ESP/CO/1, para. 32). The Committee reiterates its recommendations.

[C]: While noting the digitization of the Valle de los Caídos archives and the efforts of the Ministry of Justice to raise awareness about the Historical Memory Act, the Committee regrets that its recommendation on adopting a national legal framework on archives and on ensuring access to all archives based on clear, public criteria remains unimplemented. The Committee reiterates its recommendation.

Paragraph 23: Unaccompanied minors

The State party should develop a standard protocol for determining the age of unaccompanied children and ensure that age-determination procedures are based on safe and scientific methods, take the children's feelings into account and avoid all risks of violating their physical integrity. In addition, the State party should ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children.

Summary of State party's reply

The State party reiterates (see CCPR/C/ESP/Q/6/Add.1, paras. 41 and 43) and adds to the information regarding the Framework Protocol on Procedures for the Treatment of Unaccompanied Minors, of 22 July 2014, and regarding Organic Act No. 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Integration into Society (the Aliens Act).

The Protocol, modelled on the international legal standards on the rights of the child, establishes a comprehensive procedure for determining the age of unaccompanied minors (administered by the Public Prosecution Service pursuant to article 35 (3) of the Aliens Act). The State party elaborates further on the content of the Protocol with regard to the procedure for age determination, including the medical tests performed for that purpose.

It also provides information about the age determination procedures conducted from 2012 to 2015, and their results.

The amendment to article 12 of Act No. 1/1996 on Legal Protection of Minors was adopted on 28 July 2015 (Act No. 26/2015 on Changes to the System of Protection for Children and Adolescents) and is in line with the Committee's recommendations on ensuring maximum protection for the rights of children.

Information from non-governmental organizations

Asociación Española para el Derecho Internacional de los Derechos Humanos

The Framework Protocol on Procedures for the Treatment of Unaccompanied Minors, of 22 July 2014, is not sufficient; it has to be supplemented by local protocols on the same matter, which is a factor of uncertainty and inequality among autonomous communities. The age determination process is directed by the Public Prosecution Service, which is not sufficiently independent, given the appointment of the Attorney-General by the executive. Such competence should be vested in judicial authorities. Act No. 26/2015 is also not satisfactory, as it gives the Prosecutor the competence of conducting a proportionality test that adequately weighs the reasons for determining the age of a person. Such competence should rest equally with the relevant judicial authority.

Committee's evaluation

[B]: While appreciating the detailed information on the Framework Protocol on Procedures for the Treatment of Unaccompanied Minors, the Committee requires additional information on any steps taken to develop a standard protocol for determining the age of unaccompanied children and to ensure that age-determination procedures are based on safe and scientific methods.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested will be included in the list of issues prior to submission of the seventh periodic report of Spain.

Next periodic report: 24 July 2020

United Kingdom of Great Britain and Northern Ireland

Concluding observations:	CCPR/C/GBR/CO/7, 21 July 2015
Follow-up paragraphs:	8 and 9
Follow-up reply:[8]	23 August 2016
Committee's evaluation:	Additional information required on paragraphs 8[B][C][C][C][C] and 9[C][C][C]
Information from non-governmental organizations:	Committee on the Administration of Justice, 7 June 2017[9]

Paragraph 8: Accountability for conflict-related violations in Northern Ireland

The State party should:

(a) **Ensure, as a matter of particular urgency, that independent, impartial, prompt and effective investigations, including those proposed under the Stormont House Agreement, are conducted to ensure a full, transparent and credible account of the circumstances surrounding events in Northern Ireland with a view to identifying, prosecuting and punishing perpetrators of human rights violations, in particular the right to life, and providing appropriate remedies for victims;**

(b) **Ensure, given the passage of time, the establishment and full operation of the Historical Investigations Unit as soon as possible; guarantee its independence, by statute; secure adequate and sufficient funding to enable the effective investigation of all outstanding cases; and ensure its access to all documentation and material relevant to its investigations;**

(c) **Ensure that the Legacy Investigation Branch and the Coroner's Court in Northern Ireland are adequately resourced and are well positioned to review outstanding legacy cases effectively;**

(d) **Reconsider its position on the broad mandate of the executive to suppress the publication of inquiry reports under the Inquiries Act 2005;**

(e) **Consider launching an official inquiry into the murder of Patrick Finucane.**

Summary of State party's reply

(a) The Stormont House Agreement, reached in December 2014, includes measures that will provide a new approach in dealing with the legacy of the past in Northern Ireland, and proposes the creation of four new institutions:

(i) The Historical Investigations Unit — an independent body to take forward outstanding investigations into Troubles-related deaths;

(ii) The Independent Commission on Information Retrieval, which will enable victims and survivors to seek and privately receive information about the Troubles-related deaths of their next of kin;

(iii) An Oral History Archive — a central place for people to share experiences and narratives related to the Troubles;

(iv) The Implementation and Reconciliation Group, which will promote reconciliation and anti-sectarianism and will review and assess the implementation of the other legacy institutions proposed in the Stormont House Agreement.

[8] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAFR%2fGBR%2f24948&Lang=en.

[9] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fGBR%2f27639&Lang=en.

(b) The Historical Investigations Unit will be an independent body that will consider all outstanding cases under investigation by the Police Service of Northern Ireland's Historical Enquiries Team and the Police Ombudsman for Northern Ireland (as of 31 July 2016, there were in the region of 1,700 such cases) and will also provide dedicated family support staff and involve the next of kin in the process. Oversight will be provided by the Northern Ireland Policing Board, and the Historical Investigations Unit will be structurally and operationally independent from the police. The Government of the United Kingdom will make full disclosure to the Historical Investigations Unit (legislation to that effect is required from the United Kingdom Parliament).

The proposed legacy mechanisms were discussed further as part of the Fresh Start negotiations, but no final agreement was achieved at the time of conclusion of the Fresh Start Agreement on 17 November 2015. Therefore, legislation establishing the new mechanisms was not taken forward in autumn 2015, due to lack of consensus. Such legislation requires the explicit consent of the Northern Ireland Assembly and will thus not advance until its support can be secured.

Additional funding, of £150 million, will be available for the Stormont House Agreement measures for addressing the past.

(c) The financial packages to support the cross-party Stormont House Agreement and Fresh Start Agreement are due to deliver around £2.5 billion of extra spending power to the Northern Ireland Executive to help it deliver across its priorities, including the legacy of the past.

The Department of Justice has responsibility for resourcing the Police Service of Northern Ireland and the Police Ombudsman for Northern Ireland's Historical Unit. The Historical Investigations Unit, when established, will take on the vast majority of the legacy cases that currently sit with the Police Service of Northern Ireland and the Police Ombudsman for Northern Ireland's Historical Unit.

The State party is also committed to working with the Lord Chief Justice and to support the Northern Ireland Executive in reforming legacy inquests to better support the delivery of investigations that comply with article 2 of the European Convention on Human Rights.

(d) The State party addressed the role of the executive in withholding material in an inquiry report in its response of June 2014 to the House of Lords Select Committee on the Inquiries Act 2005. It considers that section 25 provides a clear framework for when information may be withheld and that the executive must have such power.

(e) The de Silva review was the most effective way of establishing the truth in the case of Patrick Finucane. The Prime Minister of the United Kingdom apologized in person for the State collusion that had taken place in the death of Mr. Finucane. The decision not to hold a public inquiry was upheld in the first instance in June 2015, and was under appeal.

Information from non-governmental organizations

Committee on the Administration of Justice

(a) There was no progress in the implementation of the legacy mechanisms under the 2014 Stormont House Agreement.

The independent mechanisms of the Police Ombudsman and the coroners' courts have continued to deal with a small number of cases but budget cuts and the withholding of resources have limited their work. There have also been a number of Police Service for Northern Ireland investigations into legacy deaths.

These investigations resulted in the first-ever charges being pressed for conflict-era legacy killings, against three soldiers in two cases. The non-governmental organization (NGO) reports significant criticism from the media, security forces and the political establishment, including from British Cabinet ministers, with misleading propaganda alleging disproportionate judicial bias in legacy inquiries, and political attacks on lawyers and NGOs. There has also been considerable criticism of lawyers and law officers, most notably the Director of Public Prosecutions, who announced his resignation in May 2017.

As at 7 June 2017, there was not a single conviction of a member of the security forces as a result of a legacy investigation.

In April 2017, the Defence Committee of the United Kingdom Parliament published an inquiry report calling for an amnesty (framed as a "statute of limitations") covering all conflict-related incidents until 1998 involving members of the armed forces. It also sought a truth-recovery mechanism and urged the Government to consider extending such an amnesty to the police and other security personnel, leaving the determination as to whether such an amnesty should cover all conflict-related incidents to a future government.

(b) No legislation to establish the Historical Investigations Unit and other legacy bodies from the Stormont House Agreement was introduced in Parliament. The key obstacle in the draft bill was the ministerial national security veto that would prevent disclosure in family reports of any material relating to the actions of intelligence services or intelligence branches of the police and the military (allowing the concealment of practices of informant-based collusion with paramilitary organizations).

There was no public consultation on Stormont House Agreement legislation despite the State party's commitment to do so.

(c) Following a review of all outstanding legacy cases by Lord Justice Weir in January 2016, the Lord Chief Justice of Northern Ireland proposed the establishment of a new legacy inquest unit and completion of the existing legacy inquest caseload within a period of five years subject to the support of a properly resourced Legacy Inquest Unit in the Northern Ireland Courts and Tribunals Service, the cooperation of the relevant justice bodies, and availability of the resources required. The caseload was to be taken forward in September 2016, however the Government of the United Kingdom withheld funding through the introduction of a precondition of consensus between the main Northern Ireland political parties before resources were released. A further precondition that no monies would be released unless and until the Northern Ireland political parties reached a deal on overall legacy matters was introduced in March 2017.

(d) The powers of ministers to suppress publication of Inquiries Act reports has been retained and the United Kingdom has declined to reconsider them.

(e) The commitment to a public inquiry into the murder of Mr. Finucane made in the 2001 Weston Park Agreement remains unimplemented. On 14 February 2017, the Court of Appeal in Northern Ireland upheld the decision not to hold a public inquiry, and an appeal was lodged with the Supreme Court.

Committee's evaluation

[B] (a): The Committee notes the information on first charges for conflict-era legacy killings against three soldiers as reported by the NGO, and requires updated information on the outcome of those cases and on any other prosecutions for conflict-related human rights violations secured by investigative mechanisms as well as on eventual convictions and reparations provided to victims.

The Committee also notes with concern the proposed enactment of a statute of limitations covering all Troubles-related incidents, and requires updates on any relevant developments concerning the initiative, including on any draft or adopted legislation to that effect, its content and its compliance with Covenant obligations.

[C] (b): The Committee takes note of the framework for addressing the legacy of the past in Northern Ireland under the Stormont House Agreement of December 2014, but regrets the lack of progress in establishing the four institutions, in particular the Historical Investigations Unit, and the negative impact that such delay may have on conducting independent, impartial, prompt and effective investigations into the conflict-related human rights violations in Northern Ireland. The Committee requires additional information on: (a) any draft bill or adopted legislation establishing the Historical Investigations Unit and other legacy bodies and any public consultations on such legislation; (b) the independence and impartiality of the Historical Investigations Unit and how its investigations satisfy the standards under the Covenant; (c) allocation of adequate resources to enable it to carry out its mandate effectively; (d) access to information and full disclosure by the Government to the Historical Investigations Unit, including any national security exceptions to such

disclosure and their compatibility with State party's obligations under the Covenant; (e) progress made by the Historical Investigations Unit in investigating cases falling under its remit (if applicable). The Committee reiterates its recommendation.

[C] (c): The State party provided no specific information on measures taken to ensure that the Legacy Investigation Branch within the Police Service of Northern Ireland and the Coroner's Court in Northern Ireland were adequately resourced and were well positioned to review outstanding legacy cases effectively. While welcoming the proposal by the Lord Chief Justice of Northern Ireland of a dedicated legacy inquest unit to address the backlog of legacy inquests, the Committee regrets that the resources necessary for its establishment and operation have not been provided. The Committee reiterates its recommendation.

[C] (d): The Committee regrets that the State party has not reconsidered its position on the broad mandate of the executive to suppress the publication of inquiry reports under the Inquiries Act 2005. The Committee reiterates its recommendation.

[C] (e): The State party has not considered conducting an official inquiry into the murder of Patrick Finucane. The Committee also notes that the decision not to hold a public inquiry is the subject of judicial review by the Supreme Court, and it requires information on the outcome of appeal proceedings and on any other measures taken to implement its recommendation. The Committee reiterates its recommendation.

Paragraph 9: Accountability for human rights violations committed by British forces abroad

The State party should:

(a) **Ensure that the proceedings before the Intelligence and Security Committee of Parliament meet the requirements of the Covenant, including an adequate balance between security interests and the need for accountability for human rights violations, and consider initiating a full judicial investigation in all relevant detainee cases;**

(b) **Address the excessive delays in the investigation of cases dealt with by the Iraq Historical Allegations Team and consider establishing more robust accountability measures to ensure prompt, independent, impartial and effective investigations;**

(c) **Ensure that the allegations in connection with Camp Nama are thoroughly, independently and impartially investigated.**

Summary of State party's reply

(a) The inquiry by the Intelligence and Security Committee of Parliament in relation to detainee treatment and rendition is under way, and the timetable for the inquiry is a matter for the Intelligence and Security Committee.

(b) The State party elaborates on the activity of the Iraq Historic Allegations Team established in 2010, including on its investigative strategy.

(c) Allegations that British armed forces personnel transferred detainees into the custody of, or were present during interrogations by, forces of the United States of America, at Camp Nama and other so-called "black sites", were known to the Iraq Historic Allegations Team. However, as at 23 August 2016, it had not yet been able to identify Camp Nama with a particular location, because a number of the facilities operated by forces of the United States were known by various designations. Any credible allegations will be investigated.

The State party did not maintain any site that could have been called a "black site".

Committee's evaluation

[C] (a): The Committee notes that the Intelligence and Security Committee's inquiry into human rights violations committed by British forces abroad is still ongoing. The State party provided no information on measures taken to ensure that proceedings before the Intelligence and Security Committee met the requirements of the Covenant, including an adequate balance between security interests and accountability for human rights violations,

nor on whether consideration had been given to initiating a full judicial investigation in all relevant detainee cases. The Committee reiterates its recommendation.

[C] (b): The Committee notes from publicly available information that the Iraq Historic Allegations Team officially closed on 30 June 2017, and that the remaining investigations have been taken over by Service Police Legacy Investigations. It requires clarification on the independence and impartiality of Service Police Legacy Investigations and its capacity to conduct prompt, independent, impartial and effective investigations; and information on: (a) the outcome of investigations undertaken by the Iraq Historic Allegations Team until its closure; and (b) the number of cases transferred to Service Police Legacy Investigations and the progress of the investigations. The Committee reiterates its recommendation.

[C] (c): The Committee regrets the State party's assertion regarding the inability to identify Camp Nama with a particular location and the lack of specific information on measures taken to investigate the allegations in connection with Camp Nama thoroughly, independently and impartially. The Committee reiterates its recommendation.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 24 July 2020

115th session (19 October–6 November 2015)

Iraq

Concluding observations:	CCPR/C/IRQ/CO/5, 4 November 2015
Follow-up paragraphs:	20, 26, 28 and 30
Follow-up reply:	CCPR/C/IRQ/CO/5/Add.1, 19 July 2017
Committee's evaluation:	Additional information required on paragraphs 20**[C][B]**, 26**[C][C]**, 28**[C]** and 30**[B][C][B]**
Non-governmental organizations:	Alkarama Foundation, 6 October 2017[10]

Paragraph 20: Allegations of human rights violations in the context of the ongoing armed conflict

The State party should make more vigorous efforts to ensure that:

(a) **All serious human rights violations are independently, promptly and thoroughly investigated, that perpetrators are brought to justice and adequately sanctioned as soon as feasible, and that victims receive full reparation;**

(b) **Its forces, groups under its control and forces collaborating with it do not perpetrate human rights violations, and that they take all necessary precautionary measures to avoid civilian casualties;**

(c) **All persons under its jurisdiction, in particular those who are most vulnerable owing to their ethnicity or religion, are afforded the necessary protection from violent attacks and gross human rights violations;**

(d) **Victims, particularly women and girls released from ISIL, receive adequate support, and that children who have been used in or recruited into armed conflict receive adequate assistance for their physical and psychological recovery and reintegration.**

[10] See http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRQ/INT_CCPR_NGS_IRQ_29127_E.pdf.

Summary of State party's reply

(a) The State party provides information about violations of international human rights law and international humanitarian law by Islamic State in Iraq and the Levant (ISIL).

Courts have been applying the law. A criminal sentence leads to civil compensation for physical and moral damages suffered by the complainant who, conversely, has the right to bring a civil case for compensation.

The Supreme Judicial Council decided to create a special judicial body to investigate the terrorist attacks against Yazidis, in order to document the offences and punish the perpetrators.

The judiciary has been able to resume its activities and investigate attacks on minority communities, owing to the improved security situation. There is no impunity when a crime is found to have taken place.

(b) and (c) Great efforts were made to impose security and the rule of law throughout Iraq — including operations to liberate parts of the governorates of Diyala, Salah al-Din, Anbar and Nineveh, and the provision of tents and other necessities to displaced persons, without discrimination.

All Iraqi forces received advanced training on respecting human rights and international humanitarian law standards. The humanitarian approach to military operations against ISIL and the focus on protection of civilians has been noted by the Special Representative of the Secretary-General for Iraq.

The Ministry of the Interior undertakes to protect places of worship of minority groups. Police units have been assigned to protect facilities and public figures.

Council of Representatives Decree No. 43 (2016) calls on the Government to take the necessary measures to: (a) liberate abducted Yazidi women; (b) reconstruct the Province of Sinjar; (c) consider the victims of terrorist acts in the Province of Sinjar as martyrs; and (d) create a committee to look into the Yazidi genocide so that the case can be submitted to the International Criminal Court.

The judiciary is accessible to everyone and is ready to respond immediately to any attack against society.

(d) The Council of Ministers approved the national policy for displaced persons. The Minister of Migration and Displaced Persons will head a high-level committee for the provision of aid and shelter to persons displaced as a result of terrorism. The Ministry of Labour and Social Affairs is providing services, including social security payments as well as help desks in all the governorates, to women and girls who have been liberated from ISIL. Teams from the Ministry are conducting visits to camps housing displaced women in the Baghdad and Kurdistan regions to learn about their difficulties and needs and provide support.

Yazidi women survivors have been exempted from providing documentation in order to receive social security payments.

The Ministry of Health provides education to prevent violence, and psychological and social support for survivors. Health care is provided without discrimination. Orphans and children with disabilities who are liberated from ISIL will be placed in State institutions and institutes for persons with disabilities with educational programmes to help them recover and reintegrate into society.

A reconstruction fund for areas damaged by acts of terrorism was set up in 2015.

Decree No. 33 of 2016 issued by the Council of Representatives concerns the formation of a commission to address the problems arising from the ISIL presence in Nineveh. Council of Ministers Decree No. 146 concerns the national child protection policy.

Information from non-governmental organizations

Alkarama Foundation

(a) The State party's report does not mention any investigation into the allegations of abuse in the Fallujah operations, or those made in connection with the offensive to retake Mosul from ISIL. The investigation into allegations of abuse in the Fallujah operations announced by the Prime Minister on 4 June 2016 has been criticized for its lack of transparency.

(b) State authorities are operating outside any legal framework by invoking the fight against terrorism and the war against ISIL as justification for mass arrests followed by incommunicado detentions. Alkarama has documented numerous cases of enforced disappearance in the context of the ongoing armed conflict since the Committee's concluding observations.

Operations to recapture areas from ISIL are preceded by indiscriminate and disproportionate bombing, resulting in numerous civilian casualties and the destruction of civilian objects, in violation of international humanitarian law.

(c) Alkarama received numerous testimonies of executions of Sunni civilians fleeing Fallujah, and of detention and torture of hundreds of local residents under the pretext that they had supported ISIL.

Committee's evaluation

[C] (a) and (b): The Committee notes the information provided, but regrets the lack of concrete information on prompt, independent, impartial and thorough investigations into serious human rights violations, prosecution and punishment of perpetrators, and full reparation provided to victims. The Committee requires such information, as well as information on: (a) the progress made by the designated special judicial body in documenting and investigating terrorist attacks against Yazidis and in prosecuting and punishing perpetrators; and (b) effective measures to protect civilians in combat zones, and steps taken with regard to allegations of indiscriminate and disproportionate bombing, mass arrests, incommunicado detention, torture and enforced disappearance, including in the course of the Fallujah operations and the offensive against ISIL in Mosul. The Committee reiterates its recommendations.

[B] (c) and (d): The Committee notes the information provided by the State party, but requires more specific information on the effective protection of ethnic and religious communities against violent attacks and gross human rights violations, including on any measures taken to investigate the allegations of executions of Sunni civilians fleeing Fallujah, and of detention and torture of residents because of alleged support for ISIL.

It also requires information on: (a) the progress made in providing aid and shelter to displaced persons by the committee mandated to do so; and (b) any rehabilitation programmes aimed at the physical and psychological recovery of children who have been used in or recruited into armed conflict.

Paragraph 26: Violence against women

The State party should redouble its efforts to prevent and combat all forms of violence against women and, in particular, should:

(a) **Facilitate the reporting of cases of violence against women and ensure that all such cases are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to full reparation and means of protection, including access to State- and NGO-run shelters or centres throughout the State party's territory;**

(b) **Swiftly amend its legislation to guarantee adequate protection of women against violence, including by repealing the Criminal Code provisions establishing "honourable motives" as a mitigating circumstance for murder and allowing for the exoneration of rapists who marry their victims, and by ensuring that all forms of**

violence against women, such as domestic violence and marital rape, are criminalized with appropriate penalties in all its territory. In this respect, the State party should speed up the adoption of the draft law on domestic violence at the national level and ensure that the final text is fully compliant with the Covenant;

(c) **Increase its awareness-raising activities on the unacceptability and negative effects of violence against women and on the resources and protections available to victims, initiate programmes for perpetrators of domestic violence to change their violent behaviour, and reinforce its training activities for State officials so that they can respond effectively to all forms of violence against women.**

Summary of State party's reply

(a) The State party reiterates information (see CCPR/C/IRQ/Q/5/Add.1, para. 26) on the establishment of a directorate for the protection of families and children from domestic violence, adding that it has 16 departments throughout the country, and, inter alia, receives complaints from victims or cases referred by other entities, conducts academic research on domestic violence, and offers training. It also provides statistics regarding domestic violence registered by the directorate in 2014.

(b) The State party reiterates (see CCPR/C/IRQ/Q/5/Add.1, para. 31) that a domestic violence bill is under examination by the Council of Representatives. The bill defines domestic violence and includes provisions on shelters and the creation of mechanisms to protect victims, on reporting crimes and on legal recourse. As regards punishment, the bill refers to the Criminal Code and other relevant legislation.

(c) Training workshops have been held for ministerial staff who work with victims of domestic violence, and have helped raise awareness of the issue in the Government and in society. The prevalence of traditional customs remains the biggest challenge in adopting legislation protecting women.

Committee's evaluation

[C] (a) and (b): The Committee notes that the directorate for the protection of families and children from domestic violence was established before the adoption of its concluding observations. It regrets that no information was provided on facilitating the reporting of cases of violence against women, on investigations and prosecutions of perpetrators, and on access for victims to reparation and protection, including State- and NGO-run shelters, since the adoption of its concluding observations.

The Committee regrets that no measures appear to have been taken to repeal the Criminal Code provisions establishing "honourable motives" as a mitigating circumstance for murder and allowing for the exoneration of rapists who marry their victims, and to criminalize domestic violence and marital rape. Although a bill on domestic violence is pending before the Council of Representatives, the Committee notes that the legislative process was initiated before the adoption of its concluding observations and regrets the delay in adopting a law on the matter. It requires additional information on the content of the bill pending before the Council of Representatives, the progress in regard to its adoption, and its compliance with the Covenant.

[C] (c): While noting the general information regarding training workshops for State officials, the Committee regrets the lack of information on awareness-raising activities throughout society on the unacceptability of violence against women and on protection measures available to victims, and on any behaviour-change programmes for perpetrators of domestic violence. It requires such information, as well as specific information on: (a) the extent, frequency and content of training for working-level State officials dealing with violence against women; and (b) any measures to change traditional perceptions and attitudes toward women.

Paragraph 28: Death penalty

The State party should give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of

the death penalty. If the death penalty is maintained, the State party should take all measures necessary, including legislative action, to ensure that: (a) the death penalty is provided only for the most serious crimes; (b) it is never mandatory; and (c) pardon or commutation of the sentence is available in all cases, regardless of the crime committed. The State party should also ensure that, if imposed at all, the death penalty is never imposed in violation of the Covenant, including in violation of fair trial procedures.

Summary of State party's reply

The death penalty is imposed only for the most serious crimes, and is mandatory as defined by law and by the circumstances of the offence and the offender. It can only be pardoned or commuted in accordance with the Constitution or as defined by law. Mitigating circumstances are set forth in section 5 of the Criminal Code. Committing a crime for reasons of honour or following serious and unjustified provocation by the victim is also considered a mitigating justification. In the case of mitigating justification, the penalty shall be reduced to life imprisonment, fixed-term imprisonment, or detention for a period of not less than one year (art. 130 of the Criminal Code). The court may substitute a lesser penalty if it considers that the circumstances of the offence or the offender call for leniency (art. 132 of the Criminal Code). There are also provisions in the Criminal Code that give judges broad powers of discretion in determining the punishment, based on the circumstances of the case.

If there is a violation of fair trial procedures, the court's ruling can be appealed, or may be challenged under the cassation procedure.

Information from non-governmental organizations

Alkarama Foundation

The State party justifies the use of the death penalty rather than addressing its abolition. The death penalty applies to several offences that do not meet the threshold of "the most serious crimes" — including compromising the internal security of the State, crimes constituting a public danger, and crimes relating to attacks on transport and telecommunication systems. Furthermore, the Anti-Terrorism Law (No. 13 of 2005) applies the death penalty mandatorily to those convicted of committing or threatening to commit acts of terrorism, thus the death penalty can also be imposed on individuals who have not been convicted of an intentional crime with lethal or extremely grave consequences.

Investigations and judicial proceedings in death penalty cases systematically fail to respect due process and fair trial standards. The Central Criminal Court of Iraq, which imposes death sentences, lacks any guarantee of independence and systematically considers confessions extracted under torture as evidence.

No information is provided in the State party's reply about any draft law aimed at granting the President or any other authority the power to commute the sentence or grant a special pardon, including for terrorism-related crimes for which no pardon can be granted under existing legislation.

Committee's evaluation

[C]: The Committee regrets that the State party has not reported giving consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Committee also regrets that no legislative action has been taken to ensure that: (a) the death penalty is imposed only for the most serious crimes, that is, crimes of extreme gravity involving intentional killing; (b) the death penalty is never mandatory; and (c) pardon or commutation is available in all cases. The Committee reiterates its recommendation.

Paragraph 30: Prohibition of torture and ill-treatment

The State party should:

(a) **Adopt the legislative measures necessary to ensure that the Criminal Code includes a definition of torture that is fully in line with article 7 of the Covenant and other internationally established norms, preferably by codifying it as an independent crime which stipulates sanctions that are commensurate with the gravity of the act;**

(b) **Take more vigorous steps to prevent torture and ill-treatment and to ensure that all such cases are promptly, independently and thoroughly investigated, that perpetrators are brought to justice and that victims receive full reparation;**

(c) **Ensure that confessions obtained in violation of article 7 of the Covenant are not accepted by courts under any circumstances, that allegations made by defendants that a statement was made under torture or ill-treatment are promptly and adequately investigated, and that the burden of proving that the confession was made voluntarily falls on the prosecution;**

(d) **Ensure that all cases of death in custody are promptly, independently and thoroughly investigated and, if it is determined that they were the result of torture, ill-treatment or wilful negligence, that the perpetrators are brought to justice.**

Summary of State party's reply

(a) Torture is banned under article 37 (1) (c) of the Constitution, and so are confessions made under coercion or torture. Articles 333 and 421 of the Criminal Code define the penalties for torture, and investigative procedures are handled solely by the judiciary.

Although torture is not defined in the Criminal Code, a definition of it is provided in article 12 (2) (e) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005). A bill is being drafted and will include a definition of torture consistent with the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance.

(b) Concerning penalties, it is stated in article 333 of the Criminal Code that public officials or public servants who torture or order torture in order to compel an individual to confess, withhold information, or give a particular opinion, shall be liable to imprisonment. According to article 332, a public official or public servant who uses their position to inflict cruelty against another shall be punished by detention of up to one year and/or a fine of up to 100 dinars. Psychological torture is considered by Iraqi legislators as being equal to physical torture.

(c) According to article 37 (1) of the Constitution, confessions made under coercion or torture shall not be admitted. Courts have discretionary powers to evaluate the worth of a confession. The Supreme Judicial Council issued a number of relevant circulars and directives to the investigating authorities and to the Ministry of the Interior. The Code of Criminal Procedure gives accused persons the right to appoint a lawyer or have one assigned ex officio by the court. Defendants' statements must be taken in the presence of their lawyer, and any rulings issued by the investigating courts may be appealed if there has been any violation of rights or of fair trial procedures. Accused persons have the right to a medical examination if they claim to have been tortured. Any physical signs indicating torture or coercion should be duly recorded.

(d) The Office of the Public Prosecutor has bureaux in prisons and places of detention where an official is responsible for inspecting the facilities and reporting any violations. In cases of death in custody, a report on the circumstances of the death is submitted to the Office of the Public Prosecutor, and an autopsy is performed to determine the cause of death. If the death is the result of torture, ill-treatment or deliberate neglect, the Office of the Public Prosecutor launches a criminal action.

The State party provides information about the General Amnesty Act of 25 August 2016. Among other things, the Act gives persons convicted of serious or major offences, including offences exempted from the amnesty, the right to apply for a retrial if they claim that their confessions were extracted by coercion or if any of the legal proceedings against them were based on the words of a secret informant or the confession of another defendant.

Information from non-governmental organizations

Alkarama Foundation

(a) Torture is yet to be criminalized under the Criminal Code, and the only definition of torture contained in article 12 (2) (e) of the Iraqi Supreme Criminal Tribunal Act (Act No. 10 of 2005) falls short of international standards.

(b) and (d) There is no reference in the State party's report to its obligation to carry out prompt, thorough and impartial investigations into all allegations of torture, ill-treatment, and death in custody. According to testimonies received by Alkarama, complaints lodged with the relevant authorities never led to investigations and remain systematically unanswered.

(c) Domestic courts give undue weight to confessions when evaluating evidence — a practice enshrined in article 217 of the Code of Criminal Procedure (absolute authority of the trial court to decide whether a confession is admitted as incriminating evidence).

Committee's evaluation

[B] (a): The Committee notes that a bill that will include a definition of torture consistent with the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance is being drafted. The Committee requires information on any relevant developments concerning the bill, the progress in regard to its adoption, and its compliance with article 7 of the Covenant and other internationally established norms, including with regard to the definition of torture and sanctions commensurate with the gravity of the crime.

The Committee also requires clarification as to whether persons convicted of torture are excluded from the amnesty under the General Amnesty Act of 25 August 2016.

[C] (b) and (d): The Committee regrets that no information was provided on prevention of torture and ill-treatment, nor on prompt, independent, impartial and thorough investigations into such acts, including deaths in custody as a result of torture and ill-treatment, nor on prosecution and punishment of perpetrators and the provision of full reparation to victims. The Committee reiterates its recommendations.

[B] (c): The Committee notes the information provided by the State party, but requires additional information on how the prohibition of coerced confessions is enforced by judges in practice, including statistics on allegations of confessions extracted under torture or ill-treatment made by defendants, investigations into such allegations, and any retrial for those convicted on the basis of forced confession (as provided for under the General Amnesty Act of 25 August 2016).

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 6 November 2018